

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

DENNIS D. CORBRAY,

Petitioner,

v.

SANDRA CARTER,

Respondent.

Case No. C06-5043RJB

ORDER DENYING CERTIFICATE  
OF APPEALABILITY

This matter comes before the court on the petitioner's Notice of Appeal. Dkt. 26. The court must consider whether to grant or deny the petitioner a Certificate of Appealability. *See* 28 U.S.C. 2253(c)(3). The court has carefully reviewed the record herein.

PROCEDURAL HISTORY

On September 7, 2006, U.S. Magistrate Judge Karen L. Strombom issued a Report and Recommendation, concluding that petitioner's habeas claims did not merit habeas relief and recommending that the petition for writ of habeas corpus be denied. Dkt. 22. On October 20, 2006, the court adopted the Report and Recommendation and denied the petition. Dkt. 24. On November 27, 2006, petitioner filed a Motion to Appeal Dismissal of Habeas Corpus § 2254 (Dkt. 26), which included arguments in support of the appeal. The court has considered the arguments petitioner sets forth in Dkt. 26 as support for a Certificate of Appealability.

1                    STANDARD FOR GRANTING A CERTIFICATE OF APPEALABILITY

2            The district court should grant an application for a Certificate of Appealability only if the  
3 petitioner makes a “substantial showing of the denial of a constitutional right.” 28 U.S.C. §  
4 2253(c)(3). To obtain a Certificate of Appealability under 28 U.S.C. § 2253(c), a habeas petitioner  
5 must make a showing that reasonable jurists could debate whether, or agree that, the petition should  
6 have been resolved in a different manner or that the issues presented were adequate to deserve  
7 encouragement to proceed further. *Slack v. McDaniel*, 120 S.Ct. 1595, 1603-04 (2000) (quoting  
8 *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)).            When the court denies a claim on  
9 procedural grounds, the petitioner must show that jurists of reason would find it debatable whether  
10 the petition states a valid claim of the denial of a constitutional right and that jurists of reason would  
11 find it debatable whether the district court was correct in its procedural ruling. *Slack v. McDaniel*,  
12 120 S.Ct. at 1604.

13                    DISCUSSION


14            Petitioner’s habeas claims were exhausted and were, accordingly, reviewed on the merits. In  
15 his appeal, petitioner reiterates the arguments he raised in the original petition for writ of habeas  
16 corpus and in his objections to the Report and Recommendation. The Report and Recommendation  
17 addressed those claims thoroughly. The claims do not merit habeas relief. Petitioner also claims that  
18 this court failed to review the Report and Recommendation *de novo*; this argument is without merit,  
19 as the court reviewed the entire file prior to adopting the Report and Recommendation. Finally,  
20 petitioner claims that this court violated his right to Due Process by failing to afford him an  
21 evidentiary hearing; this issue was fully addressed in the Report and Recommendation and the court  
22 concurred with the conclusion of the magistrate judge that an evidentiary hearing was not warranted.

23            Petitioner has not shown that reasonable jurists could debate whether, or agree that, the  
24 petition should have been resolved in a different manner or that the issues presented were adequate  
25 to deserve encouragement to proceed further. The court should deny a Certificate of Appealability.

1 Accordingly, it is hereby **ORDERED** that petitioner's motion for a Certificate of  
2 Appealability is **DENIED**.

3 The Clerk is directed to send uncertified copies of this Order to all counsel of record and to  
4 any party appearing *pro se* at said party's last known address.

5 DATED this 11<sup>th</sup> day of December, 2006.

6  
7   
8 Robert J. Bryan  
United States District Judge